

SUBJECT: Retail beer license exception for Sea World

COMMITTEE: Liquor Regulation: favorable, without amendment

VOTE: 7 ayes--Wilson, G. Thompson, Barton, Hartland,
Jackson, Junell, Repp

0 nays

2 absent--A. Moreno, Goolsby

WITNESSES: No public hearing (see NOTES)

BACKGROUND: Sec. 11.49 of the Texas Alcoholic Beverage Code prohibits authorized retail sellers of alcoholic beverages from sharing space, employees, business facilities and services with authorized manufacturers, distributors or wineries.

In December 1989, Anheuser-Busch, a beer manufacturer, purchased Sea World of Texas, a San Antonio marine park in which alcoholic beverages are sold at retail by a caterer. The previous owner was Harcourt Brace Jovanovich.

DIGEST: HB 16 would allow holders of caterer's permits to sell alcoholic beverages in certain marine parks even though the park owners hold a manufacturer's license, a brewer's permit, or both, provided the park owner's brands were not given preference over competing brands.

A marine park would be defined as an area of 245 to 255 acres in a county with a population of over 950,000, in which live fish, marine animals and related aquatic, food service and amusement activities are used for the education or entertainment of the public (Sea World of Texas in Bexar County).

A caterer's permit to operate in the marine park could be granted only to retail sellers who do not use an existing authorization to share premises, employees, business facilities and services with a business entity that is not covered by the prohibitions of sec. 11.49 of the Alcoholic Beverage Code.

Preferential treatment would be defined to include any action by the caterer that results in sales of the

owner's brands of alcoholic beverages exceeding by more than 5 percent in a calendar year the percentage share of the same brands in the county as a whole in the prior year. The right of the caterer to sell alcoholic beverages in the park could not be made dependent on the sales volume of a specific brand. The caterer and the park owner would not be permitted to share employees, business machines or services.

Holders of alcoholic beverage permits or licenses who are injured by a violation of the provisions of the bill could bring suit in district court.

The bill also would repeal sec. 102.02 of the Alcoholic Beverage Code, which specifies that ownership of an athletic facility by a manufacturer is not a ground for denying or canceling a retail license on the premises.

**SUPPORTERS
SAY:**

HB 16 would correct a technicality in the law and allow visitors to Sea World of Texas to continue to enjoy alcoholic beverages during their visits, just as visitors to other marine parks do.

By making one narrowly defined exception to the Alcoholic Beverage Code, HB 16 simply would allow current practice at the park to continue. Also, the bill's prohibitions on preferential treatment of Anheuser-Busch products would maintain the spirit of the Alcoholic Beverage Code's restrictions on retail sales by manufacturers and distributors. The caterers who now sell the beverages in the park are independent businesses, not extensions of the park owners.

Sea World is important to the economy of San Antonio and the entire state, fostering tourism, jobs and many spin-off businesses. The state should not discourage visitors to Sea World, and prohibiting alcohol sales at the park would reduce tourist traffic and hurt San Antonio's economy.

Selling alcohol at Sea World has created no behavior problems at the park, neither before Anheuser-Busch bought the park nor after. Sea World is and will continue to be a family-oriented park, and HB 16 would not change it in any way.

HB 16
House Research Organization
page 3

OPPONENTS
SAY:

An exception in the Alcoholic Beverage Code should not be made for one business. Current law is designed to protect wholesalers from being driven out of business by manufacturers who retail their own products. The situation at Sea World is what the law was designed to prevent.

The provisions in HB 16 that purport to prevent preferential treatment of Anheuser-Busch products would not be sufficient to guard against unfair competition. The caterer's business would still be dependent on the good will of owner of the park -- the manufacturer of certain brands of beer sold by the caterer.

If the state makes an exception for one theme park, soon other types of businesses will demand similar special treatment, undermining the protections of the law.

OTHER
OPPONENTS
SAY:

Anheuser-Busch apparently is in violation of current law, and HB 16 would provide an after-the-fact dispensation. The Legislature instead might consider investigating why the Texas Alcoholic Beverage Commission has not enforced the law as it is written and why it has made an exception for one beer manufacturer.

NOTES:

The Senate companion bill, SB 26 by Krier, is scheduled to be considered by Senate State Affairs Committee in a public hearing today.

During the fifth called session, the House Liquor Regulation Committee favorably reported an identical bill, HB 115 by Wilson, on May 17, but no further action was taken.

During the fourth called session, the House Liquor Regulation Committee considered an identical bill, HB 44 by Wilson, at a public hearing but took no further action on the bill.